IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1199 of 1981

with

FIRST APPEAL No 1175 of 1982
with
Civil Application No.1988 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UNITED INDIA INSURANCE CO.LTD.
Versus
TARULATA WD/O.MATHURDAS RATANSHI POPAT

Appearance:
1. First Appeal No. 1199 of 1981
MR PV NANAVATI for Petitioner No. 1
MR GAURANG H BHATT for Respondent No. 1-6
..... for Respondent No. 7-9,11
MR IQBAL M MALIK for Respondent No. 10
MR KC SHAH for Respondent No. 12
2. First Appeal No. 1175 of 1982
and
Civil Application No.1988 of 2002

MR GAURANG H BHATT for the appellants
NOTICE SERVED for Respondent No. 1 and 6
Mr. Iqbal M. Malik for respondent No.4
Mr. P.V. Nanavati for respondent No.5
Mr.KC Shah for respondent No.7

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 11/04/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Appellant-United India Insurance Company Limited, by filing First Appeal No.1199 of 1981, under section 110-D of the Motor Vehicles Act, 1939, has questioned the legality and validity of the judgment and award dated July 14, 1981, passed by the Motor Accident Claims Tribunal (Main), Narol, in M.A.C. Application No.223 of 1978.

2. First Appeal No.1175 of 1982 is filed by the appellants-original claimants, for enhancement of compensation in the sum of Rs.1,20,000/- for the accidental death caused to deceased Mathurdas Ratanshi Popat, in a vehicular accident, which took place on April 17, 1978, at about 5.30 a.m. due to rash and negligent driving by S.T. Luxury Bus bearing registration No.GTH 4614 and motor truck bearing registration no. GTK 2318 near Bavla, on the National Highway No.8A.

3. Civil Application No.1988 of 2002 has been filed by the original claimants for permission to encash the fixed deposit receipts.

4. As common question of facts and law arise for our consideration, we propose to dispose of both these appeals and the civil application by this common order.

5. Deceased Mathurdas was travelling in ST Bus No.GTH 4714 from Junagadh to Ahmedabad. He boarded the bus at Junagadh on the night of April 16, 1978. The bus had reached near Bavla on the National Highway No.8A in the morning around 5.30 a.m. on April 17, 1978, and, at that time, motor truck No.GTK 2318 came from the opposite side and there was a collision between the two vehicles. Due to the collusion, the S.T. bus had left the road and gone into the field about 40 feet away from the edge of the road. Mathurdas sustained serious injuries and died

in the bus itself. The said bus was, at the relevant time, driven by the opponent No.1 at a high speed and in the rash and negligent manner. The motor truck was driven by the opponent No.3 who was also rash and negligent in driving the said truck. The offending truck belonged to opponent No.4 and was insured with opponent No.5, United India Fire & General Insurance Company Limited.

6. It is the case of the claimants that, at the time of the accident, deceased Mathurdas was aged about 38 years. He was having a flourishing business earning Rs.3500/- per month, and he was the Managing Partner of the partnership firm, namely, M/s. Ratanshi Mavji. According to the claimants, the deceased Mathurdas was getting net annual income of Rs.30,000/- out of the business from the partnership firm. The claimants filed M.A.C Application No.223 of 1978 in the Motor Accident Claims Tribunal, Ahmedabad (Rural), at Narol, claiming compensation of Rs.4 lakhs from opponent Nos.1 to 5, as detailed in paragraphs 11(1), 11(2) and 11(3) of the claim application.

7. Opponent No.1, the bus driver, filed written statement at Exh.45, and, on behalf of the Gujarat State Road Transport Corporation (owner of the bus), written statement Exh.22 was filed, inter alia, contending that the age of the deceased was not admitted. It was contended that the deceased was not earning Rs.3500/- per month. As regards negligence, it was contended that the opponent No.1 was driving the bus at a slow speed and on the correct side of the road carefully and was blowing the horn of the bus whenever necessary. It was contended that two trucks were coming from the opposite direction and both the trucks were driven at an excessive speed and in rash and negligent manner. It was stated that some loose material was placed in the said trucks and, as there was strong wind blowing in the morning hours, the material loaded in the truck was fluttering in the air. The opponent No.1 had taken the bus further to his left side. It was contended that the first oncoming truck had crossed the bus, but the driver of the second oncoming truck (offending truck) had lost control of his vehicle. As a result, the truck had dashed with the bus in the region of the driver's cabin, and the bus turned to its right and stopped on the spot. It was contended that, even after the collision, the truck had travelled to a long distance and had then come to a stop on the road in an oblique line. The opponents Nos. 1 and 2 have contended that the accident had taken place due to sole negligence on the part of the truck driver and,

therefore, the claim petition be dismissed against them.

8. The opponent No.3, truck driver, did not file written statement. The opponent No.4, the owner of the truck, had filed written statement at Exh.35, and the Insurance Company (opponent No.5), with which the offending truck was insured, filed its written statement at Exh.42 and Exh.50. It was contended by the opponent No.5 that, when the accident had taken place, the opponent No.4 was not owner of the truck in question nor was he in possession of the truck, as he had sold away the truck on March 11, 1978 to the opponent No.6 at Rs.64,561.00. It was further contended that the truck No. GTK 2318 was not insured with it at the relevant time. It was further contended by the opponent No.5 that, as the truck was sold prior to the accident to the opponent No.6, there was no contract of insurance between the opponent No.6 and the Insurance Company and, therefore, the Insurance Company was not liable to pay the compensation to the claimants. By filing written statement at Exh.60, the opponent No.5 admitted that the truck was insured with it to cover third party risk and the policy was for the period from 18.8.1977 to 17.8.1978, i.e. covering the date of the accident.

9. The opponent No.6 filed written statement at Exh.68, inter alia, contending that he had sold away the truck to one Kacharabhai Prabhudas, opponent No.7, on April 6, 1978, and, since then, Kacharabhai Prabhudas was the owner of the truck, and the opponent No.3, who was driving the truck at the relevant time, was not his employee. The opponent No.7, who was subsequently joined as owner of the truck, filed written statement at Exh.85, inter alia, contending that he was not registered owner of the offending truck on the date of the accident and, therefore, he was not liable to pay any amount of compensation to the claimants and, therefore, the claim petition be dismissed against him.

10. On the basis of rival pleadings of the parties, the Tribunal framed issues at Exh.86. To substantiate the claim of compensation, on behalf of the claimants, Anil Vrajlal Doshi, Accountant of the firm, M/s. Ratanshi Mavji, was examined at Exh.94, the widow of deceased Mathurdas, namely, Tarulata, was examined at Exh.96, and the brother of Tarulata, namely, Amrutlal Gordhandas, was examined at Exh.134. The claimants also produced documentary evidence consisting of First Information Report, panchanama of place of incident, income-tax returns, and account books of the firm,etc.

to prove their claim. On behalf of the opponents, the driver of the S.T. Bus, Abumiya Noormohmad, was examined at Exh.221. The opponents had also produced the policy of insurance of the truck at Exh.238.

11. On appreciation of oral as well as documentary evidence, the Tribunal held that the driver of the S.T. Bus and the driver of the truck had both contributed in causing the accident. However, the Tribunal apportioned contributory negligence of the driver of the S.T. Bus and the driver of the truck at 70:30 respectively. The Tribunal held that the claimants are entitled to receive compensation of Rs.2,46,500/- with running interest at the rate of 6% per annum from the date of the application till realisation and proportionate costs of the application. However, the Tribunal held that the liability of the Insurance Company, opponent No.5, was limited to the extent of Rs.1,50,000/-. The Tribunal further held that, on the date of the accident, as the offending truck stood in the name of the opponent No.4 in the RTO record, he was the owner of the said truck.

12. The Insurance Company, by filing First Appeal No.1199 of 1981 has challenged the finding of the Tribunal holding that the Insurance Company was liable to answer the award to the extent of Rs.1,50,000/- as per the terms of the policy. The claimants have filed First Appeal No.1175 of 1982 claiming enhanced compensation of Rs.1,20,000.00.

13. The learned advocate, Mr. P.V. Nanavati, and learned advocate Mr. Gaurang H. Bhatt, have taken us through the entire record and proceedings of the appeals. We have also heard learned advocate Mr. K.C. Shah who represented respondent No.12 in First Appeal No.1199 of 1981 and respondent No.7 in First Appeal No.1175 of 1982.

14. The learned advocate, Mr. P.V. Nanavati, has vehemently submitted that, as per the policy of the insurance of the motor truck No. GTK 2318, the liability of the Insurance Company was limited to Rs.50,000/-. Mr. P.V. Nanavati has drawn our attention to the terms and conditions of the policy Exh.238 produced on the record of the case. It becomes evident that, at the time of the accident, the policy was in existence and it was a valid policy covering the risk of third party, and to the extent of Rs.1,50,000/-. Therefore, in our view, the Tribunal had committed no error when it had held that the liability of the Insurance Company to answer the award was limited to Rs.1,50,000/- as per the policy Exh.238. Even the learned advocate for the appellant-insurance

company has not disputed when he was confronted with the terms and conditions mentioned in the policy. This was the only point raised at the time of final hearing of the First Appeal No.1199 of 1981 filed by the Insurance Company.

15. Learned counsel, Mr. Gaurang H. Bhatt, who appeared for the original claimants, has vehemently submitted that the Tribunal has erred in not awarding compensation claimed in the claim application. It is submitted by the learned counsel for the original claimants that, at the time of the accident, Mathurdas was aged about 38 years and, therefore, the Tribunal ought to have applied a multiplier of 15, instead of 12 adopted by the Tribunal. The learned counsel for the claimants has further submitted that cogent and reliable evidence was produced by the claimants in the nature of account books and income-tax returns, which justify the enhanced claim of compensation of Rs.1,20,000/- and, therefore, the appeal filed by the claimants be allowed.

16. We have minutely gone through the entire documentary evidence with regard to income of the deceased Mathurdas. The deceased Mathurdas was the Managing Partner in the firm of M/s. Ratanshi Mavji. It may be noted that, after his death, the claimant No.1, Tarulata, who is the widow of the deceased Mathurdas has been inducted as a partner and the partnership firm started doing the business. The Tribunal, for determining the annual income of the deceased Mathurdas, had taken into consideration the income of the deceased of the assessment years 1973-74 to 1977-78 and had rightly held that the average annual income of deceased Mathurdas would be Rs.34,000/- and after deducting approximately Rs.8000/- towards income-tax payable by him, the net yearly income would be Rs.26,000/-. The Tribunal had deducted Rs.6,000/- for personal expenses of the deceased Mathurdas and had arrived at the conclusion that the yearly loss of the dependency benefit to the claimants would be Rs.20,000/-. The Tribunal had applied multiplier of 12 and awarded a sum of Rs.2,40,000 on the head of loss of dependency benefit to the claimants.

17. In our opinion, the compensation awarded by the Tribunal on the head of dependency benefits cannot be said to be on the lower side. For arriving at the appropriate figure, the Tribunal had taken into consideration all the relevant facts and circumstances of the case and the income of the partnership firm by relying upon various documentary evidence in the nature of income-tax assessment orders and the books of account.

The submission of the learned advocate for the claimants that the multiplier adopted by the Tribunal is on the lower side and the multiplier of 15 should have been applied looking to the age of the deceased, deserves no merit. The Tribunal, while applying the multiplier of 12, had given cogent and convincing reason in paragraph 53 of the impugned judgment that:

"it will be wrong in the circumstances of this case to consider only the age of the deceased in fixing the multiplier. The factor referred to above by me, viz., that Mathurdas has left a business-capital of about Rs.2,38,000/- and the family is carrying on the same business with the aid of the said capital, is an important factor to be borne in mind in the present case."

Taking into consideration over all view of the matter, in our view, the multiplier of 12 adopted by the Tribunal cannot be called to be arbitrary or on the lower side. Under the circumstances, we are the opinion that there is no scope for enhancement of the compensation. These were the only submissions made on behalf of the claimants.

18. As a result of foregoing discussion,

(a) First Appeal No.1199 of 1981 filed by the Insurance Company is dismissed with no order as to costs. The finding of the Tribunal fixing the liability of the Insurance Company to the extent of Rs.1,50,000/- as per the terms and conditions of the policy Exh.238, is hereby confirmed;

and

(b) First Appeal No.1175 of 1982 filed by the claimants for enhancement of compensation is dismissed with no order as to costs. The award of the Tribunal is hereby confirmed.

Civil Application No.1988 of 2002

19. It is submitted by the learned advocate for the claimants that, on maturity of the FDR in the month of May 2002, the claimants Nos. 1 to 5 may be permitted to withdraw the amount invested in the said FDR along with accrued interest. He further submitted that the FDR invested in the name of claimant No.6, Jayesh Mathurdas, will be matured in March 2004, and the claimant No.6 may be permitted to encash the said FDR prematurely. At the time of filing the claim application, Jayesh was a minor and now he is a major.

20. As the First Appeals are dismissed, the Tribunal is directed to permit the claimants Nos.1 to 5 to receive the amount of the FDR along with accrued interest. It would be open to the claimant No.6, Jayesh Mathurdas, to encash the said FDR either prematurely or on maturity, as he thinks proper. With these directions, Civil Application No.1988 of 2002 stands disposed of with no order as to costs.

April 11, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)
(swamy)